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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

Bankruptcy Case No. 19-30088 (DM)

**PG&E CORPORATION,**

Chapter 11

**- and -**

(Lead Case) (Jointly Administered)

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

**REORGANIZED DEBTORS AND FIRE  
VICTIM TRUST'S JOINT *EX PARTE*  
MOTION TO EXTEND, IN PART, DEADLINE  
TO COMPLY WITH ORDER ON MOTION  
OF WILLIAM B. ABRAMS AUTHORIZING  
DISCOVERY REGARDING  
ADMINISTRATION OF THE FIRE VICTIM  
TRUST**

- ☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric Company  
☒ Affects both Debtors

*\* All papers shall be filed in the Lead Case,  
No. 19-30088 (DM).*

[No Hearing Requested]

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. RELIEF REQUESTED**

The Reorganized Debtors and PG&E Fire Victim Trust (the “FVT”) respectfully jointly request that the Court extend the FVT’s September 6, 2022 deadline to comply with the Court’s August 2, 2022 *Order on Motion of William B. Abrams Authorizing Discovery Regarding Administration of the Fire Victim Trust* [Dkt. No. 12682] (the “**Discovery Order**”) until October 3, 2022, solely with respect to the disclosure and posting of a settlement (the “**D&O Action Settlement**”) between the Reorganized Debtors, the FVT, and certain former directors and officers of PG&E (as defined below, the “**D&O Defendants**”) to resolve certain litigation brought by the FVT against the D&O Defendants. [REDACTED]

Importantly, the terms of the D&O Action Settlement will be made public; the relief requested in this Joint Motion is simply to extend the deadline to disclose the document for a short period of time. [REDACTED]

The relief requested in this Joint Motion is required prior to September 6, 2022 (the

1 current deadline by which the FVT must disclose the D&O Action Settlement under the Discovery  
2 Order), and therefore expedited consideration of this Motion is warranted. In support of the Motion, the  
3 Reorganized Debtors and the FVT submit the Declaration of Robin J. Reilly (the “**Reilly Declaration**”),  
4 filed contemporaneously herewith. A proposed form of order granting the relief requested herein is  
5 annexed hereto as **Exhibit A** (the “**Proposed Order**”).

## 6 **II. JURISDICTION AND VENUE**

7 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,  
8 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D.  
9 Cal.), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b).  
10 Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## 11 **III. BACKGROUND**

12 On January 29, 2019 (the “**Petition Date**”), the Debtors commenced with the Court  
13 voluntary cases under chapter 11 of the Bankruptcy Code. Prior to the Effective Date (as defined below),  
14 the Debtors continued to operate their businesses and manage their properties as debtors in possession  
15 pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner was appointed  
16 in either of the Chapter 11 Cases. The Chapter 11 Cases are being jointly administered for procedural  
17 purposes only pursuant to Bankruptcy Rule 1015(b).

18 By order dated June 20, 2020 [Dkt. No. 8053] (the “**Confirmation Order**”), the  
19 Bankruptcy Court confirmed the *Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of*  
20 *Reorganization Dated June 19, 2020* (as may be further modified, amended or supplemented from time  
21 to time, and together with any exhibits or scheduled thereto, the “**Plan**”). The Effective Date of the Plan  
22 occurred on July 1, 2020. *See* Dkt. No. 8252.

23 Pursuant to Section 6.7 of the Plan, the FVT was established to, among other purposes,  
24 administer, process, settle, resolve, satisfy, and pay certain claims arising out of the 2015 Butte Fire, the  
25 2017 North Bay Fires, and the 2018 Camp Fire, (collectively, the “**Fires**”), and prosecute or settle the  
26 Assigned Rights and Causes of Action (as defined in Section 1.8 of the Plan). On November 18, 2021,  
27 the FVT filed a second amended complaint in the Superior Court of California, San Francisco County,  
28 captioned *Trotter v. Williams, et al.* (Lead Case No. CGC-17-562591) (“the **D&O Action**”). The D&O

1 Action alleges two causes of action, both for breach of fiduciary duty, in connection with the 2017 North  
2 Bay Fires and 2018 Camp Fire against certain former officers and directors of the Reorganized Debtors.<sup>1</sup>

3 On May 23, 2022, William B. Abrams filed a motion seeking certain discovery from the  
4 FVT pursuant to Fed. R. Bankr. P. 2004. *See Motion of William B. Abrams Pursuant to Federal Rule of*  
5 *Bankruptcy Procedure 2004 for Entry of an Order Authorizing Discovery and Hearings Regarding the*  
6 *Administration of the Fire Victim Trust* [Dkt. No. 12440] (the “**Abrams Motion**”). On June 7, 2022,  
7 the Court conducted a hearing on the Abrams Motion. *See Transcript of June 7, 2022 Hearing* [Dkt. No.  
8 12495]. On June 21, 2022, the FVT filed its objection to the Abrams Motion. *See Objection of Fire*  
9 *Victim Trustee to Motion of William B. Abrams Pursuant to Fed. R. Bankr. 2004 for Entry of an Order*  
10 *Authorizing Discovery and Hearings Regarding the Administration of the Fire Victim Trust* [Dkt. No.  
11 12527]. On July 6, 2022, Mr. Abrams filed a reply in support of the Abrams Motion. *See William B.*  
12 *Abrams Reply to the Objection of the Fire Victim Trustee Pursuant to Fed. R. Bankr. 2004 for Entry of*  
13 *an Order Authorizing Discovery and Hearings Regarding the Administration of the Fire Victim Trust*  
14 [Dkt. No. 12593].

15 On August 2, 2022, the Court entered an order with respect to the Abrams Motion. *See*  
16 *Order on Motion of William B. Abrams Authorizing Discovery Regarding Administration of the Fire*  
17 *Victim Trust* [Dkt. No. 12682] (the “**Discovery Order**”). The Discovery Order in Section V(C), among  
18 other things, requires the FVT, by September 6, 2022, to identify and disclose certain information and  
19 documents related to settlements entered into by the FVT with respect to Assigned Claims (as defined  
20 by Section 1.8 of the Plan), including “any agreement, order, or other document memorializing the  
21 outcome.” *See* Discovery Order at 10-11.

22 The FVT, Reorganized Debtors and D&O Defendants have agreed to fully and finally  
23 settle the D&O Action. [REDACTED]

24 [REDACTED]

25

26 <sup>1</sup> Defendants Lewis Chew, Fred J. Fowler, Maryellen C. Herringer, Richard C. Kelly, Roger H.  
27 Kimmel, Richard A. Meserve, Forrest E. Miller, Eric D. Mullins, Rosendo G. Parra, Barbara L.  
28 Rambo, Anne Shen Smith, and Barry Lawson Williams (collectively, the “**Director Defendants**”);  
Defendants Kevin Dasso, Anthony F. Earley, Jr., Patrick M. Hogan, Christopher P. Johns, Julie M.  
Kane, Gregg L. Lemler, Steve E. Malnight, Dinyar B. Mistry, Jason P. Wells, and Geisha J. Williams  
(collectively, the “**Officer Defendants**” and together with the Director Defendants, the “**D&O Defendants**”)

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1 [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 **IV. BASIS FOR RELIEF REQUESTED**

7 Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order . . . that

8 is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 107(b)

9 further provides:

10 On request of a party in interest, the bankruptcy court *shall*, and on the bankruptcy

11 court’s own motion, the bankruptcy court may—

12 (1) Protect any entity with respect to a trade secret or *confidential* research,

development, or commercial information.

13 11 U.S.C. § 107(b) (emphasis added). Parsing the language of 107(b), courts have emphasized that once

14 the court determines that the information falls within one of the enumerated 107(b) categories, the court

15 “is *required* to protect [the movant] and has no discretion to deny the application.” *In re Orion Pictures*

16 *Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). In addition, section 107(b) expressly authorizes the court to grant

17 protection, where warranted, to the confidential commercial information of “an entity.” 11 U.S.C.

18 § 107(b). Unlike its counterpart, Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of

19 the Bankruptcy Code does not require the movant to demonstrate “good cause.” *Orion Pictures Corp.*,

20 21 F.3d at 28. Indeed, under section 107(b) the movant need only show “that the information it [seeks]

21 to seal [is] ‘confidential’ and ‘commercial’ in nature.” *Id.* at 27. Commercial information is broadly

22 defined to include information that could have a “chilling effect on negotiations, ultimately affecting the

23 viability of Debtors,” *see In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (quoting *In*

24 *re Lomas Fin. Corp.*, No. 90 Civ. 7827 (LLS), 1991 WL 21231, at \*2 (S.D.N.Y. Feb. 11, 1991)).

25 Significantly, commercial information need not rise to the level of a trade secret to warrant section

26 107(b)’s protection. *See Orion Pictures Corp.*, 21 F.3d at 28 (finding that “§ 107(b) is carefully drafted

27 to avoid merging ‘trade secrets’ with ‘confidential commercial information’”).

28

1 The Bankruptcy Rules similarly authorize the Court to “make any order which justice  
2 requires (1) to protect the estate or any entity in respect of a trade secret or other *confidential* research,  
3 development, or *commercial information*.” Fed. R. Bankr. P. 9018 (emphasis added), *see also In re*  
4 *Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (“[T]he whole point of [Bankruptcy  
5 Rule 9018] is to protect business entities from disclosure of information that could reasonably be  
6 expected to cause the entity commercial injury”).

7 As the Court recognized in a recent decision, discovery orders are interlocutory in nature.  
8 *See Order Denying PricewaterhouseCoopers LLP’s Motion for Stay Pending Appeal* [Dkt. No. 11285]  
9 at 3 (noting that “PwC’s Appeal is of an interlocutory discovery order”). As a result, the Court retains  
10 substantial latitude to modify the Discovery Order and should do so, in a very modest fashion, here. *See*  
11 *In re RS Air, LLC*, 638 B.R. 403, 415 (B.A.P. 9th Cir. 2022) (discussing interlocutory ruling and citing  
12 cases for proposition that an interlocutory ruling could be modified at any time and for any reason prior  
13 to final judgment); *In re Lochmiller Indus., Inc.*, 178 B.R. 241, 245 n.18 (Bankr. S.D. Cal. 1995) (noting  
14 that interlocutory orders are “subject to review and modification while the case is pending.”).

15 The Reorganized Debtors and the FVT seek to extend the FVT’s deadline to disclose and  
16 produce the D&O Action Settlement until October 3, 2022. The Discovery Order itself anticipated that  
17 certain provisions of settlement agreements might need to be treated confidentially. *See* Discovery Order  
18 at 11 (“If the Trustee believes any provision must or should be kept confidential, he should file a request  
19 with the court to permit the filing of a redacted version of such a document and the court will review the  
20 unredacted version *in camera* and issue an appropriate order.”). Moreover, the Reorganized Debtors  
21 and the FVT are not requesting that the disclosure and posting of the D&O Action Settlement be kept  
22 confidential indefinitely, but only that the disclosure be temporarily delayed by a modest period of time

23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 The Reorganized Debtors and the FVT seek expedited relief due to the September 6, 2022  
27 deadline to comply. *See* Bankruptcy Local Rule 9014-1(c)(2) (generally requiring 21 days’ notice for  
28 motions). The expedited nature of the relief does not prejudice any party, as this request merely seeks a

1 modest extension of time to comply with a discovery order with respect to a single agreement, and does  
2 not affect the substantive rights of any party. The Reorganized Debtors and the FVT submit that *ex parte*  
3 relief is appropriate here, given the short and carefully tailored extension of time that is requested, and  
4 the commercial sensitivity of the request.

5 For the reasons set forth herein, this Court should grant the Joint Motion and the relief  
6 requested.

7 **V. NOTICE**

8 Notice of this *ex parte* Joint Motion in redacted form will be provided to (i) the Office of  
9 the United States Trustee for Region 17 (Attn: Andrew R. Vara, Esq. and Timothy Laffredi, Esq.); (ii)  
10 William B. Abrams; and (iii) those persons who have formally appeared in these Chapter 11 Cases and  
11 requested service pursuant to Bankruptcy Rule 2002. The Reorganized Debtors and the FVT respectfully  
12 submit that no further notice is required.

13 No previous request for the relief sought herein has been made to this or any other court.

14 WHEREFORE the Reorganized Debtors and the FVT respectfully request entry of an  
15 order granting the relief requested herein and such other and further relief as the Court may deem just  
16 and appropriate.

17 Dated: August 29, 2022

18 **WEIL, GOTSHAL & MANGES LLP**  
19 **KELLER BENVENUTTI KIM LLP**

20 /s/ Richard W. Slack

Richard W. Slack

21 *Attorneys for Debtors and Reorganized Debtors*

22 **BROWN RUDNICK LLP**

23 /s/ David J. Molton

24 David J. Molton

25 *Attorneys for the Fire Victim Trustee*  
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